

APPENDIX D

GUIDELINES FOR IMPLEMENTING  
CORPS POLICY FOR PRIVATE EXCLUSIVE USE  
AT  
CORPS OF ENGINEERS WATER RESOURCE PROJECT

D-1. Objective. The objective of these guidelines is to effect the Corps policy in the development of regional plans pertaining to private exclusive use at Corps of Engineers civil works projects.

D-2. Purpose. These guidelines establish a consistent base of definition, procedures and monitoring for use by MSC commanders in the development and implantation of regional plans for allowing or prohibiting private exclusive use at water resource projects within their jurisdiction. Guidance provided is intended to allow MSC commanders flexibility for establishing their program appropriate to each existing situation based on regional, project or site specific considerations.

D-3. Definitions. For the purpose of these guidelines, the following definitions apply:

a. Private Exclusive Use. The use or occupancy of individually owned permanent structures for human habitation cited on public land and water areas at Corps civil works projects. Any action which gives a special privilege to an individual or group of individuals on land or water at a Corps project that precludes use of the land and waters by the general public, is considered to be "private exclusive." Lesser forms of private use, such as individual houseboats, boat docks and piers, fencing, signing, landscaping, etc., are excluded from this definition, since they are the subject of concern under the shoreline management program.

b. Permanent Structures. Those constructed or manufactured structures on land or water being used for human habitation, on an intermittent or extended use basis. Permanent structures normally take the form of floating cabins, cottages and non-transient mobile homes and trailers. Such developments are essentially subdivisions located on public property and have been developed at private, quasi-public, and commercial concession areas. Other forms of structures providing a short duration human habitation need on a first-come, first-served basis, such as lodges, motels, dormitories, cabins, etc., are not included in the definition of private exclusive use. Similarly, custodial-type quarters may be authorized as outgranted areas when justified for management or security purposes.

c. Floating Cabins. A floating permanent structure utilized for intermittent or extended human occupancy at a fixed mooring point. Floating cabins are usually not self-powered, and in many cases have evolved from boathouses and do not possess the usual performance characteristics of a boat.

d. Houseboats. A self-powered vessel capable of supporting overnight occupancy. Houseboats have performance capabilities usually associated with boats and are not used for long term occupancy at a fixed mooring point.

e. Fair and Equitable. Conditions specifying the time of removal for individual or groups of private exclusive use structures which should be negotiated so that the financial and physical

impact to owners will have been mitigated adequately through advance notice and extension of time to adjust to the fact of their eventual termination.

f. Regional Factors. Those natural and social conditions (i.e., climate, access, visitation (present and future), land requirements, water depth, length of recreation season, remoteness, topography, population density, etc.) used in the development of rationale for defining regions and choosing appropriate management options pertaining to private exclusive use.

g. Management Options. Planned actions or strategies by commanders of each MSC or district to implement established policies pertaining to private exclusive use at Corps of Engineers water resource projects.

h. Phasing. Phasing is a "step by step" approach for the eventual removal of private exclusive use structures. This is a specific type of management option that may be considered appropriate. As an example, such an approach could be implemented over time through successive negotiations of appropriate terms and conditions of a series of outgrant renewals upon expiration of each subsequent term. The objective of this approach is to provide a fair and equitable means to both the government and the grantee for phasing out existing private exclusive uses.

i. Private Clubs. A group of individuals who associate for a common purpose, usually in an organization where benefits are limited to members of the group and not to the general public. With respect to private clubs on Corps of Engineers project lands, such groups have taken the form of large corporate developments serving company employees, power boat clubs, sailing clubs, fishing and hunting clubs, swimming clubs and other like organizations.

j. L/V Factor.  $L/V = \text{Land/ Visitation} = \text{Fee acres Above Normal Pool/Total Annual Visitation}$ . The most current information as contained in the Natural Resource Management System (NRMS) will be used for calculating the L/V factor.

k. Timesharing. Timesharing provides a possessory or use right of a specific facility or piece of personal property for a specified period of time each year for a number of years. Time share ownership of real property is not possible since legal title is held by the United States.

#### D-4. General Guidance.

a. Corps policy prohibits the expansion or the development of new private exclusive use except that permitted under the shoreline management program or authorized outgrant; however, in some cases, permitting private exclusive use as defined may maximize use of project lands consistent with the conservation of environmental values and the development of recreational resources for the public. Such use, however, will be considered a low priority and evaluated against existing resources and the future need for the higher priority purposes. In some regions, or at specific projects where public demand for use of available project resources is not anticipated in the foreseeable future, such use could serve as an interim means to optimize use of public lands. Leases issued to non-profit organizations under paragraph 8-158 of ER 405-1-12, do not constitute private exclusive use as defined in this guidance.

b. There is a set of definable regional factors which can be used to assist in screening projects which could afford interim opportunities for either new or expansion of existing private exclusive use. These regional factors include remoteness, experienced or projected visitation,

and availability of land resources. Application of these factors in combination with each other will serve as a common baseline for evaluating the general compatibility of regional factors to allow new or expansion of such developments. It is recognized that application of such baseline information must be flexible. There may be other overriding parameters or regional factors, such as length of recreation season (climate), topography and accessibility to project areas which may otherwise influence a determination regarding the suitability for private exclusive use to be allowed or precluded at a particular project or group of projects.

c. In terms of the set of criteria indicated in paragraph c, a project or site is considered remote if it is located in excess of 100 miles from a Standard Metropolitan Statistical Area (SMSA). Visitation becomes a factor when the ultimate visitation at a project has not been obtained or when it is not projected to be reached in the foreseeable future. Foreseeable future will be measured in increments of not less than five years or more than 25 years. The availability of land resources for interim use is a function of demonstrated or anticipated public use and the compatibility of the available resources to support such use based on good planning principles and the establishment of sound resource use objectives. Regional plans permitting interim development of private exclusive use must recognize that such use is subject to removal when a higher priority need becomes evident. In addition to the remoteness criteria, if a project's visitation exceeds 2,000,000 recreation days of use annually, or when the L/V factor is less than .010, MSC commanders will consider that project as no longer remote even though it otherwise meets the above distance criteria from SMSA. Since the visitation at a project is the only dynamic factor in this set of criteria, these changes in the definition of remoteness should alert MSC commanders on an annual basis to public use being experienced at projects under their jurisdiction. These indicators should be used to implement modifications to approved regional plans for private exclusive use as may be determined necessary by the MSC Commander.

d. When it is determined that available land resources are limited and will be needed for higher priority purposes in the reasonably foreseeable future, existing private exclusive use should be precluded. In this event, where commitments for private exclusive use have been made, a phase out program of existing private exclusive use developments will be implemented. Such a program should be established on a fair and equitable basis on a regional, individual project or site specific considerations.

e. Timesharing. The main point in considering time share proposals or private exclusive use requests is to determine whether the use violates either the time share policy or private exclusive use policy or both. Violation of one or both of the policies is reason for denial of the proposal or request.

(1) An example of prohibited timesharing would be the sale by a concessionaire of the use of a specific campsite or boat for every first week in August for a twenty-year period. This would also violate the definition of private exclusive use since the public would not be able to use that campsite or boat for that particular week.

(2) Examples of proposals not considered timesharing are:

(a) A sale by a concessionaire of memberships which entitle the member to a campsite or boat on a first-come, first-serve basis along with the general public. If the campsites or boats are only available to members, this would be private exclusive use and, therefore, would be prohibited.

(b) A sale by a concessionaire of a boat to several individuals. Since no title is retained by the concessionaire and the sale is not a use or possession only, it is not a violation of the private exclusive use policy or the time share policy.

f. Existing Trailers at Concessionaire and Club Sites. Section 320 of the Water Resources Development Act of 1990 was intended to prohibit the removal of trailers at concessions and club sites at Corps projects. Rental payments due the government under concession rules should reflect rental income received by concessionaire for trailer use. It is assumed that holders of club leases are making payments to the government based on fair market rents.

D-5. Procedures. The following procedures will be applied by MSC commanders for the development of regional plans for allowing or prohibiting private exclusive use at projects under their jurisdiction. Implementation of approved regional plans pertaining to private exclusive use, including the review and approval of annual inventory reports and program monitoring, rests with the MSC Commander. As an initial step, MSC commanders are charged with the preparation and issuance of detailed guidance to district commanders for implementing the objective and purpose of the guideline. Regional plans for either allowing or prohibiting private exclusive use will be based on informed judgement consistent with approved project master plans.